

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KPM ANALYTICS NORTH AMERICA
CORPORATION,

Plaintiff.

V.

BLUE SUN SCIENTIFIC, LLC, THE
INNOVATIVE TECHNOLOGIES GROUP &
CO., LTD., ARNOLD EILERT, MICHELLE
GAJEWSKI, ROBERT GAJEWSKI,
RACHAEL GLENISTER, GREGORY
ISRAELSON, IRVIN LUCAS, AND PHILIP
OSSOWSKI,

Defendants.

Civil Action No. 21-10572-MRG

DECLARATION OF JOHN T. GUTKOSKI

I, John T. Gutkoski, pursuant to 28 U.S.C. § 1476, do hereby state as follows:

1. I am a member in good standing of the bar of the Commonwealth of Massachusetts, and I am admitted to practice before this Court. I am in good standing in all other jurisdictions where I am admitted to practice. I am a Partner at Sunstein LLP (“Sunstein”), located at 100 High Street, Boston, Massachusetts. I serve as lead counsel for Plaintiff, KPM Analytics North America Corporation (“KPM”), in the above-captioned proceeding.
2. I submit this Declaration in connection with KPM’s Motion for Attorneys’ Fees and Costs (“Motion”). I make this Declaration based upon personal knowledge unless otherwise indicated.
3. I focus my practice on litigation, serving frequently as lead trial counsel in life sciences and high technology cases, including patent litigation, International Trade Commission proceedings, Hatch-Waxman proceedings, and trade secret litigation. I have tried cases involving pharmaceuticals, radiotherapeutics, nanotechnology, medical devices, synthetic latex, optics,

collagen production, intravenous pumps, banking and finance, semiconductors, analog and digital circuitry, smart phones, telecommunications, network architecture, imaging, sound waves, software, and electronic data.

4. I have received recognitions and awards for my work, including being named one of the world's leading patent practitioners for patent litigation by IAM Patent 1000®, as one of Thomson Reuters' Super Lawyers® for litigation, and a "Local Litigation Star" by Benchmark Litigation®.

5. My biography as it appears on Sunstein's website is attached here **Exhibit A**.

6. Before joining Sunstein, I was a partner at Morse, Barnes-Brown, and Pendleton, P.C. ("Morse") and Cesari and McKenna LLP ("Cesari"). I have served as lead counsel on this case from the beginning, working primarily with Morse attorneys Scott Magee and Paige Zacharakis, and recently with Sunstein attorney Kevin Mosier.

7. I have charged KPM between \$650-675 per hour throughout this case. At \$675, the rate charged is well below the customary hourly rate for an attorney of similar experience and ability, and well below my current standard rate at Sunstein of \$1,030 per hour.

8. Scott Magee is a Partner at Morse. Mr. Magee has been in practice for 18 years and his work has included trial litigation, arbitration, and pre-litigation dispute resolution on matters related to trade secrets, mergers and acquisitions, employment, product liability, securities, and widespread corporate governance matters in both state and federal court. Mr. Magee frequently represents businesses in a wide variety of industries, including biotech, pharmaceutical, health care, telecommunications, software, construction, and real estate. Mr. Magee was named as a "Rising Star" in the area of business litigation by Super Lawyers Magazine from 2010 through 2017.

9. Mr. Magee has charged KPM between \$495-555 per hour throughout this case, which is well below customary range of hourly rates for an attorney of Mr. Magee's experience and ability.

10. Paige Zacharakis is a sixth-year associate at Morse. Ms. Zacharakis focuses her practice on complex civil litigation, including intellectual property, corporate, and employment disputes and also represents clients before the Trademark Trial and Appeal Board. Before joining Morse in 2020, Ms. Zacharakis was employed by Pithie & Associates of Weymouth, Massachusetts where she practiced commercial litigation with a focus on construction disputes. Ms. Zacharakis also served as a legal intern to the Honorable David A. Lowy at the Massachusetts Supreme Judicial Court and is the co-author of the Fourth Edition of the MCLE "Massachusetts Discovery Practice" chapter 9, titled "Protecting Confidential Information Before and During Discovery."

11. Ms. Zacharakis has charged KPM between \$330-370 per hour throughout this case, which is well below the customary range of hourly rates for an attorney of Ms. Zacharakis' experience and ability.

12. Kevin Mosier is a fifth-year associate at Sunstein. Mr. Mosier focuses his practice on intellectual property litigation – primarily patent, trade secret, and trademark litigation. Mr. Mosier has experience litigating in both state and federal court, as well as at the International Trade Commission, the Trademark Trial and Appeal Board, and the Federal Circuit Court of Appeals. Mr. Mosier's trial experience includes recently serving as third-chair in successfully defending a merchant services technology company against patent infringement claims in the District of Delaware. Mr. Mosier previously served as a legal intern to the Honorable David H. Hennessy in this Court. Mr. Mosier has been named as a Super Lawyers® Rising Star for 2023 by Thomson Reuters.

13. Mr. Mosier charges KPM \$505 per hour, which is well below the range of customary hourly rates for an attorney of Mr. Mosier's experience and ability.

14. Mr. Magee, Ms. Zacharakis, and I handled most of the work relating to the complaint (*see* ECF No. 1), the preliminary injunction (*see* ECF Nos. 93-94, 119-120), early motion practice, discovery, and summary judgment. Mr. Mosier and Ms. Zacharakis handled most of the pre-trial work in the case, with appropriate input from me and Mr. Magee, including the Joint Pre-Trial Memorandum (*see* ECF No. 180), Trial Brief (*see* ECF No. 184), motions *in limine* (*see* ECF Nos. 194-199), and proposed jury instructions (*see* ECF No. 185-2). Mr. Mosier handled most of the supplemental briefing during trial, including KPM's updated proposed jury instructions (*see* ECF Nos. 218, 220, 224, 227). Each of us were involved in the preparation and presentation of witnesses, evidence, and arguments at trial.

15. Due to the expedited schedule required by the nature of the case, and the increasing amount of work as trial drew near, I assigned discrete tasks to additional attorneys to ensure that all tasks were completed in a timely manner. For example:

- a. Jacqueline Salwa, a first-year associate at Sunstein, provided research and writing support for KPM's proposed jury instructions and oppositions the defendants' motions *in limine*.
- b. Katherine Soule, a fifth-year associate at Sunstein, provided research and writing support for KPM's proposed jury instructions and oppositions the defendants' motions *in limine*.
- c. Bryan Harrison, a sixth-year associate at Sunstein, provided research support for KPM's oppositions the defendants' motions *in limine*.

16. Ms. Salwa and Ms. Soule each also provided research on discrete issues during the trial as needs arose.

17. Earlier in the case, partners at Cesari and Morse also pitched in on discrete tasks as needed. This includes Joseph Marrow and Matthew Mitchell from Morse, and Omar Wadwa and Matthew McCloskey from Cesari.

18. The assistance provided by each of the attorneys who worked on this case was necessary and not duplicative. By maintaining its engagement with Morse, as well as keeping me as lead counsel throughout the case, KPM was able to mitigate fees incurred by fully transitioning the case between law firms. Only one attorney, Mr. Mosier, needed to get fully up to speed with the case and he was able to do so quickly and efficiently. A full transition of the case to Sunstein would have resulted in higher fees, as more attorneys would have needed to get fully up to speed to try the case.

19. True and accurate copies of all invoices submitted to and/or paid by KPM are attached as **Exhibit B**. I have reviewed the invoices and attest to the validity of invoices for which I have personal knowledge, which includes the invoices during my time at Morse and invoices from Cesari, Sunstein, and outside vendors. Mr. Magee has reviewed all Morse and has likewise attested to their validity.

20. Morse, Cesari, and Sunstein charged KPM a total of \$3,612,967 in attorneys' fees in this case. A chart listing each attorney who worked on the case follows below:

Name and Position	Firm	Billing Rate
John Gutkoski, Partner	Sunstein	\$650-675/hour
Scott Magee, Partner	Morse	\$495-555/hour
Paige Zacharakis, Associate	Morse	\$330-370/hour
Kevin Mosier, Associate	Sunstein	\$505/hour
Jacqueline Salwa, Associate	Sunstein	\$435/hour
Katherine Soule, Associate	Sunstein	\$505/hour

Bryan Harrison, Associate	Sunstein	\$605/hour
Joseph Marrow, Partner	Morse	\$620/hour
Matthew Mitchell, Partner	Morse	\$545/hour
Omar Wadhwa, Partner	Cesari	\$500/hour
Matthew McCloskey, Partner	Cesari	\$495/hour

21. The rates charged and total attorneys' fees incurred are reasonable given the Boston-area market and the services that Morse, Cesari, and Sunstein provide. Sunstein is a leading intellectual property firm that is currently ranked in the top 10 largest intellectual property firms in Boston by the Boston Business Journal, joining the ranks of larger firms like Goodwin and WilmerHale. Sunstein is also ranked by the U.S. News – Best Lawyers® "Best Law Firms" as Tier 1 in Intellectual Property Litigation in the Boston-area and Tier 2 in Intellectual Property Litigation nationally. As discussed in KPM's Motion, cases of this nature typically result in higher attorneys' fees because of the complex issues and often technical nature of the trade secrets at issue.

22. Sunstein subscribes to third party peer monitoring services, including Thomson Reuters' Financial Insights®. According to Thomson Reuters data running from May of 2022 to the present, the prevailing average industry rates for intellectual property litigators are as follows:

Attorney Role and Experience	IP Litigation Peer Firms (All Offices)	Nationwide IP Litigation Firms (Boston Offices)
1st Year Associate	\$513	\$459
2nd Year Associate	\$556	\$532
3rd Year Associate	\$622	\$605
4th Year Associate	\$662	\$654
5th Year Associate	\$718	\$616
6th Year Associate	\$774	\$724
7th Year Associate	\$781	\$727
8th+ Year Associate	\$801	\$773
Non-Equity Partner	\$956	\$905
Equity Partner	\$1,082	\$1,083

23. KPM also incurred reasonable litigation costs for a case of this nature. These costs, which are reflected in the invoices attached hereto as **Exhibit B**, include e-discovery fees, deposition

fees, printing and copying fees, expert witness fees, trial presentation fees, shipping fees, and travel and lodging fees. These are all typical costs incurred in litigation of this nature. The costs are summarized below:

Type of Cost Incurred	Sum of Cost
E-Discovery Fees	\$78,234
Deposition and Transcript Fees	\$29,577
Printing and Copying Fees	\$21,687
Expert Fees – Neil Zoltowski	\$127,620
Trial Presentation Technician Fees	\$36,683
Shipping Fees	\$1,026
Travel and Lodging Fees	\$19,340
Total	\$314,167

24. In total, KPM was invoiced \$314,167 in costs.
25. KPM's damages expert, Neil Zoltowski, charged KPM \$495 per hour for his services, which is below industry standard rates for an expert of Mr. Zoltowski's experience. This is evidenced by the fact that the defendants' damages expert, William Kennedy, charged the defendants \$850 per hour – nearly double the rate of Mr. Zoltowski. KPM was able to prepare the case and bring it to a successful verdict without the need of other experts beyond Mr. Zoltowski, which reduced the expert witness costs incurred by KPM.
26. KPM's trial technician, Dylan Green of Green Legal Technology, charged KPM \$300 per hour plus travel costs, which is well within the range of standard hourly rates for

experienced and capable trial technicians. Mr. Green's work was crucial to KPM's presentation of evidence at trial.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 21, 2023

/s/ *John T. Gutkoski*
John T. Gutkoski